

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 1st day of August, two thousand and six.

PRESENT:

HON. GUIDO CALABRESI,
HON. SONIA SOTOMAYOR,
HON. BARRINGTON D. PARKER,
Circuit Judges.

Qiu Hui Liu,¹

Petitioner,

v.

No. 05-3181-ag
NAC

United States Department of Justice,
Attorney General Alberto R. Gonzales,

Respondents.

FOR PETITIONER: Yee Ling Poon, Robert Duk-Hwan Kim, New York, New York.

FOR RESPONDENT: Because the Court did not receive a brief from the respondent within fifteen days of the February 22, 2006, due date specified in the scheduling order issued on February 7, 2006, this case has been decided without the benefit of respondent's brief. *See* Local Rule § 0.29(d).

¹ We amend the official caption to reflect the spelling of the petitioner's name as it appears on the administrative record and petition for review.

1 UPON DUE CONSIDERATION of the Board of Immigration Appeals' ("BIA")
2 decision, it is hereby ORDERED, ADJUDGED AND DECREED, that the petition for review is
3 GRANTED in part and DENIED in part, the BIA's order is VACATED in part and AFFIRMED
4 in part, and the case is REMANDED for further proceedings consistent with this decision.

5 Qiu Hui Liu, a national and citizen of the People's Republic of China, petitions for
6 review of the May 31, 2005 Board of Immigration Appeals ("BIA") order reviewing the decision
7 of Immigration Judge ("IJ") Jeffrey Chase, which denied her application for asylum, withholding
8 of removal, and relief under the Convention Against Torture ("CAT"). *In re Qiu Hui Liu*, No. A
9 95 161 939 (B.I.A. May 31, 2005), *aff'g* No. A 95 161 939 (Immig. Ct. N.Y. City Dec. 4, 2003).
10 The BIA order expressly rejected parts of the IJ's decision, and while the BIA ultimately reached
11 the same conclusions as the IJ's decision on the remaining issues in Liu's petition, it adopted its
12 own reasoning. On appeal, therefore, we review only the BIA's order. *Chen v. Gonzales*, 435
13 F.3d 141, 144 (2d Cir. 2006). We assume the parties' familiarity with the underlying facts and
14 procedural history of the case.

15 At the outset, we note that Liu argues that IJ Chase conducted an unfair hearing, and she
16 cites to several places in the record that indicate his bias and predisposition to denying her case.
17 Having reviewed the record of the hearings before the IJ, we agree that IJ Chase demonstrated a
18 startling lack of propriety in adjudicating this case.¹ The BIA itself noted the impropriety of the

¹ In this case, there are several exchanges between the IJ and Liu during the pre-trial hearings which cause serious concerns regarding IJ Chase's neutrality and reasonableness. IJ Chase made particularly inappropriate comments during the hearings, including the following: "I don't care if you have 10 kids here. You lie to me and you're dead. No asylum. You'll be ordered deported. You'll be barred for the rest of your life. It's going to be a disaster." These comments were made even before Liu provided any testimony in support of her claims. IJ Chase also made unprofessional and inappropriate comments regarding Liu's decision to send her child to China and Liu's use of Medicaid to pay for the births of her children.

1 IJ's conduct, explicitly rejected IJ Chase's adverse credibility findings, and assumed Liu's
2 testimony to be credible in deciding the merits of her case. And as we stated above, we are
3 constrained to review the BIA's decision here.

4 In ruling on her persecution claim, the BIA found that "[h]er assertion that she was
5 required to undergo gynecological examinations in the past does not amount to past persecution."
6 The agency, however, did not give any explanation as to the basis of its conclusory determination
7 here; the IJ also reached a similar conclusion but his reasoning on this issue was less than cogent
8 and obviously skewed by the bias he demonstrated throughout the proceedings. It is, thus, not
9 clear to us what impact, if any, the IJ's formulation of the issues and his determination might
10 have had on the BIA's review. Indeed, the IJ focused on the sanitary conditions of the
11 gynecological exams without addressing the petitioner's testimony that such exams were not only
12 extremely invasive and humiliating but psychologically scarring. Liu described the ordeal as
13 "like hell" in her affidavit. As persecution encompasses "a variety of forms of adverse
14 treatment," including "the infliction of suffering or harm upon those who differ . . . [done] in a
15 way regarded as offensive," *Ivanishvili v. U.S. Dep't of Justice*, 433 F.3d 332, 341 (2d Cir.
16 2006) (quoting *In re S-A-*, 22 I. & N. Dec. 1328, 1336 (BIA 2000)), the BIA should examine on
17 remand the petitioner's evidence on this point and articulate its conclusions on this point in a
18 detailed and cogent way.

19 This potential evidence of past persecution obviously impacts the BIA's finding that she
20 does not have a well-founded fear of future prosecution. 8 C.F.R. § 208.13(b)(1) (where
21 applicant has suffered past persecution, a rebuttable presumption arises that there is a clear
22 probability of a threat of future persecution should the applicant return). In the absence of a
23 reviewable persecution determination, we do not consider the BIA's order with respect to this

1 part of her claim nor its decision with respect to her withholding claim.

2 Finally, on Liu's CAT claims, the BIA specified the evidence in the record it reviewed in
3 determining that no relief under the CAT was warranted in petitioner's case. Substantial
4 evidence supports this conclusion.

5 For the foregoing reasons, the petition for review is GRANTED in part and DENIED in
6 part, the BIA's order is VACATED in part and AFFIRMED in part, and the case is
7 REMANDED for further proceedings consistent with this decision. Should the BIA find it
8 appropriate to remand further, we direct the BIA to reassign the case to a different immigration
9 judge. *See Guo-Le Huang v. Gonzales*, — F.3d —, 2006 WL 1777897, at *8 (2d Cir. June 29,
10 2006).

11
12 FOR THE COURT:
13 Roseann B. MacKechnie, Clerk
14
15 By: _____
16 Oliva M. George, Deputy Clerk